IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

CRL.A.No. 174 of 2001(C)

ST.63/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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APPELLANT:

M/S.SREE GOKULAM CHIT AND FINANCE CO. (P) LTD. PLAZA BUILDING, MAVOOR ROAD, KOZHIKODE, REPRESENTED BY ITS POWR OF ATTORNEY HOLDER, SRI.K.SURESH BABU.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SMT.C.R.SARADAMANI

RESPONDENT:

K.C.IMBICHIKOYA HAJI, SON OF ANTHRUMANKUTTY, E.C.JEWELLERY, KODUVALLY.

BY ADV. SRI.SUNNY MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 174 of 2001

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Dated this the 23rd day of November, 2006.

JUDGMENT

Complainant in S.T.No.63/1999 on the file of the Chief Judicial Magistrate, Kozhikode is the appellant. As per the complaint, the respondent issued Ext.P1 cheque in favour of the appellant to discharge the debt and when the cheque was presented for encashment, it was dishonoured stating that there was no sufficient funds to honour the cheque. After complying the formalities, the appellant filed the complaint before the court alleging that the respondent had committed offence punishable under section 138 of the Negotiable Instruments Act, 1881. To prove the case the appellant, PW1 was examined and Exts.P1 to P6 were marked. On the side of the defence DW1 and DW2 were examined and Exts.D1 to D6 were marked. After closing the evidence on the side of the appellant, the respondent was questioned under section 313 Cr.P.C.. He denied the transaction between him and the appellant. He stated that he had taken a loan of Rs.2,00,000/- from the appellant company and Rs.1,89,300/- was remitted towards the loan. He also stated that he had given three blank cheque leaves signed as security. After considering the entire evidence, the trial court found that the appellant had failed to prove the case against the

respondent beyond reasonable doubt and hence the respondent was acquitted. Against the above finding this appeal is now attempted by the appellant company.

2. Heard.

3. Learned counsel for the appellant submits that the trial court went wrong in holding that the appellant failed to prove the case beyond reasonable doubt. It is also submitted that the trial court had not considered the entire evidence given by PW1 with regard to the transaction, for which Ext.P1 cheque was issued, and the trial court completely misread the evidence adduced by the appellant company. The learned counsel for the respondent submits that the trial court is fully justified in finidng that the appellant failed to prove the transaction between the appellant and the respondent.

4. Question to be considered in this appeal is whether the appellant has succeeded in proving the case against the respondent as alleged in the complaint.

5. PW1, power of attorney holder of the appellant company, deposed that Ext.P1 cheque dated 1-8-1998 was issued by the respondent to discharge his liability of Rs.1,75,000/-. He also deposed that the case set up by the respondent is not correct. The entire chitty transaction as stated by the respondent has been closed and Ext.P1 cheque was issued on the

basis of the mutual agreement arriaved at between the appellant and the respondent. PW1 deposed that the matter was settled between the appellant and the respondent and that there was a document executed by the respondent to the effect that the matter was settled between the parties. That document was not produced by the appellant. The respondent deposed that if the divident which he was entitled to get is adjusted, he had nothing to repay towards the loan. It has come out in evidence that the presumption in favour of the appellant has been successfully rebutted by the respondent by adducing acceptable evidence. The trial court found that the testimony of DW2 would show that Ext.P1 cheque was issued to the respondent on 6-9-1993 and Ext.P1 cheque came up for collection only on 7-8-1998. The trial court also found that the cheque was not issued as alleged by the appellant. Hence, this Court is of the view that the trial court has correctly found that it was highly doubtful that Ext.P1 cheque was issued in the manner as alleged by the appellant and it was issued to discharge any debr or liability.

6. In the circumstances, the impugned judgment requires no interference by this Court. Accordingly, the appel is dismissed.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Judgment

23-11-2006